UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CONSTELLATION BRANDS U.S. OPERATIONS, INC. d/b/a WOODBRIDGE WINERY, **Employer** and CANNERY, WAREHOUSEMEN, FOOD PROCESSORS, DRIVER AND HELPERS, LOCAL UNION NO. 601, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, **Petitioner**	:	Case No. 32-RC-135779

EMPLOYER, CONSTELLATION BRANDS U.S. OPERATIONS, INC.'S REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

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I. SUMMARY OF ARGUMENT.

This Request for Review is submitted, *inter alia*, because substantial questions of law and policy are raised by the Regional Director's departure from officially reported National Labor Relations Board ("Board") precedent in his Decision and Direction of Election ("Decision").[1] The Decision departs from Board precedent in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 N.L.R.B. No. 83 (Aug. 26, 2011) e*nfd. sub nom. Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013) ("*Specialty Healthcare*") and *Macy's & Local 1445*, 361 N.L.R.B. No. 4 (July 22, 2014) ("*Macy's*") in that it misapplied Board precedent in those cases. In effect, the Regional Director's Decision impermissibly fractures a unit, and in so doing is contrary to the intent and spirit of the Act.

Employer contends that the petitioned-for unit is not an appropriate bargaining unit, but instead the appropriate unit is a wall to wall plant wide production and maintenance unit. In the alternative, the Employer contends that if any so-called "micro unit" is appropriate, it is a unit comprised of all employees in the Cellar Department,[2] including Cellar, Barrel, Cellar Services, and Recycler employees.[3]

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[1] The Regional Director's statement in footnote 20 of the Decision that the Employer limited its argument to an "overall unit" is clearly erroneous. Employer stated on the Record (Tr. pp. 6-7) and argued in its brief that in accordance with Specialty Healthcare, Cellar employees are not a "readily identifiable group" (Employer's Brief pp. 33-35) because they are a mere piece of the entire Cellar Department. Therefore, it is axiomatic that if a micro-unit was found to be appropriate, the Employer's position is that it cannot be a fractured component of the Cellar Department.

[2] As set forth *infra* Section III (B) (1) (h), the Cellar Department comprises much more than merely the Cellar employees in the petitioned-for unit. References to the "Cellar Department" herein refer to the Employer's formal grouping and organization of its Cellar, Barrel, Cellar Services, and Recycler employees. The Cellar, Barrel, Cellar Services, and Recycler employees all work in what is formally known as the "Cellar Operations Department" in the Employer's Organization Chart. (*See* Respondent's exhibit. 4 p. 155).

[3] During the Hearing, Petitioner stated that it would accept *any* unit found appropriate by the Regional Director, including the Employer's alternative proposed "micro-unit." The Petitioner stated at the hearing, in response to the question by the Hearing Officer whether the Petitioner would wish to proceed to an election on an alternative unit from the unit it seeks, that "[s]hould the regional director or board find that another unit other than the one that we

The Employer also submits that the Regional Director's Decision on substantial factual issues is clearly erroneous on the record and such error prejudicially affects the Employer's rights.

Finally, there are compelling reasons for reconsideration of an important Board rule or policy, namely the analysis for determining an appropriate bargaining unit as dictated in *Specialty Healthcare* and *Macy's*. The Board has historically been loath to depart from single, plant wide bargaining units. Only in very limited circumstances over the 70 years it has enforced the Act, has the Board deviated from this standard: i.e., Healthcare amendments to the Act; craft units; and now *Specialty Healthcare*. This trend must be reversed with a return to the unit standard as determined by traditional community of interest factors.

The Regional Director's Decision unjustifiably and prejudicially departs from numerous other decisions validating the Board's longtime presumption in favor of one (1) plant-wide bargaining unit. Prior to *Macy's*, the Board typically held that a wall-to-wall unit of all employees was the appropriate bargaining unit. Here, the Regional Director found the petitioned-for unit appropriate, despite (1) the lack of real departmental delineation; (2) the required overwhelming community of interest in the Cellar Department between the petitioned-for unit and all other employees; and (3) irrespective of *Specialty Healthcare* and *Macy's,* the petitioned-for unit does not meet the traditional community of interest factors still utilized by the Board today.

II. STATEMENT OF THE CASE.

Constellation Brand U.S. Operations, Inc. d/b/a Woodbridge Winery ("Employer") is a New York corporation engaged in the business of producing wine. The

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have petitioned for to be an appropriate unit for which they would proceed to an election, yes, we would agree to do so." (TR, Page 1307, Lines 13-23).

Employer operates a fully integrated production facility located in Acampo, California ("Facility") that is the subject of the Petition in this case. Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 601, International Brotherhood of Teamsters ("Petitioner") filed a Petition for Representation with the Board under Section 9(c) of the National Labor Relations Act ("Act") seeking to represent a unit of "all full-time and regular part-time General Operators, Master Operators, Senior Operators, and Working Foremen employed in the Employer's Cellar Operation in Acampo, California" (expressly excluding all managers, supervisors, office clerical employees, guards, and temporary workers as defined in the Act).

On September 10, 11, 15, 16, and 17, 2014, a Hearing Officer in the Board's Region 32 office conducted a hearing and the parties filed post-hearing briefs. The Hearing Officer acknowledged on the record that under Board law a single facility production and maintenance unit is presumed to be the appropriate limit, and that the burden of proof lies with the party seeking to rebut that presumption. (TR, Page 7, Lines 19-24). As evidenced at the hearing and in the briefs, the parties disagree about the appropriateness of the petitioned-for unit within the meaning of the Act. On one hand, Petitioner contends that the petitioned-for unit of Cellar employees is an appropriate unit (consisting of about 46 employees). On the other hand, the Employer asserts that the petitioned-for unit is inappropriate and unlawfully fractures its operations, and that any unit must be a wall-to-wall unit of production and maintenance employees at the Facility (consisting of about 200 employees). In the alternative, the Employer contends the appropriate unit must be a unit comprised of all of employees in the Cellar Department, including Cellar, Barrel, Cellar Services, and Recycler employees.

On January 8, 2015, the Regional Director issued the Decision and Direction of Election which is the subject of this Request for Review.

III. STATEMENT OF FACTS.[4]

A. Operations Structure

The Employer's non-exempt production and maintenance employees are organized into the following Departments: Bottling (including 6 Sanitation employees) (approximately 84 employees) (TR, Page 94, Lines 17-21); Bottling Maintenance (approximately 19 employees) (TR, Page 97, Line 15-16); Cellar (approximately 72 employees) which includes Cellar employees (approximately 46 employees), Barrel employees (approximately 19 employees) (TR, Pages 93-94, Lines 93:25 - 94:1), Cellar Services employees (approximately 6 employees) and one Recycler; Facility Maintenance (approximately 16 employees); and Warehouse (approximately 14 employees).

Four job classifications are common to employees in the Bottling and Cellar Departments: Operator I (entry level), Operator II (intermediate), Senior Operator, and Foreman. (See Petitioner's Exhibit ("P.") 19). The Foreman job description is exactly the same regardless of whether the employee works in the Bottling, Cellar, or Warehouse Department. *Id.,* at page 7.

The Cellar Department is comprised of approximately 72 Barrel, Cellar, and Cellar Services employees, and one (1) Recycler. The 46 employees in Petitioner's proposed unit are but a portion of the Cellar Department employees who share the titles, Cellar Operator I, Cellar Operator II, and Senior Cellar Operator.

[4] A full recitation of the facts in this proceeding may be found in the Statement of Facts in Respondent Employer's Brief In Opposition To Petitioner's Petition for Representation.

B. Witness Credibility

1. Josh Schulze.

Vice President/General Manager, Josh Schulze, credibly testified that a unit of 45 Cellar employees only would be inappropriate because, it would be a fractured unit. The totality of his testimony proves same. (TR, Page 9, Lines 17-18). He has worked with Woodbridge Winery for the past 17 years. (TR, Page 9, Line 13).

2. Seng Lee.

On its direct case, the Employer called Mr. Lee, one of the two Cellar employees Petitioner subpoenaed to testify. Mr. Lee has only been on the Cellar swing shift since December 1, 2013. (TR, Page 679, Lines 15-18). Mr. Lee is currently on final warning for his latest incident. (R. 32). As a result of continually receiving warnings, Mr. Lee has not received a wage increase in two years. This policy is applied to all production and maintenance employees.

Mr. Lee's testimony supported a wall-to-wall production and maintenance unit (or at the very least a micro-unit of the entire Cellar Department) with key admissions (TR, Page 691, Lines 4-7) regarding his interactions with all Cellar Department employees. (TR, Pages 696-697, Lines 696:18 - 697:1).

3. Manuel Chavez.

The Petitioner called Mr. Chavez as its principle witness. Mr. Chavez undermined his credibility by his consistent and repetitive testimony that "if I'm not there, I'm not aware", on cross examination when asked about interdepartmental interchange and integration. (TR, Page 355, Lines 17 and 23; Page 381, Line 24; Page 382, Lines 7, 11-12, and 16; Page 383, Line 2, Page 386, Lines 20 and 23; Page 387, Line 11; Page 388, Line 1; Page 390, Line 13, Page 402, Line 7; Page 406, Line 15; Page 426, Lines 16 and 23). To this end, Mr. Chavez admitted he

knows nothing about: 1) Barrel employees working with Cellar employees, 2) Cellar employees working with Maintenance employees, 3) Barrel employees measuring tanks just as Cellar employees do, 4) employees other than Cellar employees visiting, and using things stored in, the Ingredients Warehouse, 5) employees from different departments visiting the Taco Truck that parks in a central location (area "T5" by the 600 tanks on R. 10) at the facility and eating together or using the designated smoking area next to it, 6) employees from other departments frequenting "Taco Bell," the main hub of Cellar employees, 7) Cellar employees performing maintenance functions such as painting concrete tanks, 8) employees from various departments using the microwave and ice machine, and 9)employees from various departments eating their lunches in the Production Break Room. Clearly, his testimony was evasive and lacked credibility.

Strangely, Mr. Chavez testified that he had no knowledge of what work other departments at the Facility do. (TR, Page 410, Lines 2-3; Page 412, Lines 22-23). Mr. Chavez has also had multiple warnings in the past year, has been suspended, and did not receive a wage increase.

IV. ARGUMENT AND ANALYSIS.

A. The Regional Director's Decision Departs From Officially Reported Board Precedent Inasmuch As The Petitioned-For Unit Is Not Based on a Real Departmental Unit Drawn by the Employer.

1. *Specialty Healthcare* and *Macy's*.

In *Specialty Healthcare,* the Board reaffirmed its position that a petitioner "cannot fracture a unit, seeking representation in 'an arbitrary segment' of what would be an appropriate unit. *Specialty Healthcare,* 357 N.L.R.B. No. 83 at 18 (*citing Pratt & Whitney*, 327 N.L.R.B. 1213, 1217 (1999)). "'The Board does not approve fractured units, i.e., combinations of

employees that are too narrow in scope or that have no rational basis.' *Seaboard Marine*, 327 N.L.R.B. 556 (1999)...[S]ome distinctions are too slight or too insignificant to provide a rational basis for a unit's boundaries." *Specialty Healthcare,* 357 N.L.R.B. No. 83 at 18. Contrary to Board rule, Petitioner does not seek to represent entire classifications of employees that constitute an entire department tracked along the Employer's division for function and supervision. The Regional Director's approval of the petitioned-for unit of approximately 46 Cellar employees, who, at most, are nothing more than a sub-section of employees in the Cellar Department, creates an arbitrary segment of the presumptively appropriate wall-to-wall unit of production and maintenance employees at the Facility.

Under the two-prong analysis articulated in *Specialty Healthcare*, Petitioner must first establish that the 46 Cellar employees constitute an appropriate unit by showing that the Cellar employees are readily identifiable as a group and that they share a community of interest with one another. *Id.* at 8-9 and n. 25. This it cannot do, as the record facts ignored by the Regional Director indicate, the petitioned-for unit is not a readily identifiable group.

The organizational structure in *Macy's* – which allowed the Board to find appropriate a so-called "micro-unit" – is also readily distinguishable from the Employer's structure here. In *Macy's*, the petitioned-for unit of cosmetics and fragrances employees did not constitute a sub-department of a sales department; they were considered a sales department unto themselves. The Board noted this specific point: "Significantly, this is a primary selling department, not a sub-department within a primary selling department." *Macy's,* 361 N.L.R.B. No. 4 at 10. As the Board explained in *Specialty Healthcare,*

> [i]t is highly significant that, except in situations where there is prior bargaining history, the community-of-interest test focuses almost exclusively on how the employer has chosen to structure its workplace. As the Board has recognized, "We have always assumed it obvious that the manner in which a

> particular employer has organized his plant and utilizes the skills of his labor force has a direct bearing on the community of interest among various groups of employees in the plant and is thus an important consideration in any unit determination." *International Paper Co.*, 96 N.L.R.B. 295, 298 fn. 7 (1951).

Id. at n.19. Thus, in finding the petitioned-for unit appropriate in *Macy's,* the Board found it particularly significant that the unit conformed to the departmental lines established by the employer in comprising all sales employees in the cosmetics and fragrances department. It is precisely the absence of such demarcation that renders the petitioned-for unit in this case inappropriate.

Contrary to *Specialty Healthcare* and *Macy's,* in this case Cellar employees constitute a fractured unit of employees. It is well-established that the Board does not approve of fractured units, or combinations of employees that have no rational basis. *Odwalla, Inc.*, 357 N.L.R.B. No. 132 at 5 (Dec. 9, 2011) (*citing Specialty Healthcare,* 357 N.L.R.B. No. 83, slip op. at 9).

Due to the overwhelming similarities in the terms and conditions of employment between the petitioned–for employees and the remaining production and maintenance employees, the smallest appropriate bargaining unit must include, at the very least, the additional employees from the Cellar Department, including the Recycler.[5]

As stated hereinabove, Cellar employees are at best a sub-department which does not "...trac[k] a dividing line drawn by the Employer," which the Board considers "particularly significant". *Fraser Eng'g Co., Inc. & Pipefitters Local 537, a/w United Ass'n of Journeymen &*

[5] Although there is an absence of evidence and testimony regarding similarities between Cellar employees and the Recycler, the single Recycler employee is a member of the Cellar Department, and his exclusion from a bargaining unit consisting of all the other Cellar Department employees would result in him being the only non-supervisory, unrepresented employee in the Department. *United Rentals, Inc. & Laborers Local Union 886, Laborers Int'l Union of N. Am., Afl-Cio,* 341 N.L.R.B. 540 at fn. 11 (2004) ("Although the record is sparse concerning the terms and conditions of employment of the branch associate, we include her in the unit because otherwise, she would be the only unrepresented employee at this facility.") (*citing Chrysler Corp.*, 194 N.L.R.B. 183 (1971)).

Apprentices of the Plumbing & Pipefitting Indus., Afl-Cio Petitioner, 359 N.L.R.B. No. 80, slip op. at 1 (Mar. 20, 2013).

2. *Neiman Marcus Group d/b/a Bergdorf Goodman.*

In *The Neiman Marcus Grp., Inc.*, 361 N.L.R.B. No. 11 (July 28, 2014) ("*Bergdorf Goodman*"), the Board, applying *Macy's*, dismissed a petition for a unit comprised of women's shoes associates in two non-contiguous selling departments in a multi-department retail clothing store. The Regional Director in *Bergdorf Goodman* inexplicably departed from *Macy's*. In *Bergdorf Goodman* the Board found a unit not drawn on departmental lines inappropriate.

In the case at hand, and in line with *Bergdorf Goodman,* Cellar employees share the same salary structure as excluded employees in the Cellar Department; employees in the petitioned-for unit have identical skills and training as excluded employees in the Cellar Department; Cellar employees attend inter-departmental committee meetings, such as the employee safety committee which meets every month; and the petitioned-for unit has been acknowledged by the Regional Director as having interchange with groups of excluded employees in the Cellar Department. Simply put, the boundaries of the petitioned-for unit do not resemble the administrative or operational lines drawn by the Employer. *Id.*

3. The Regional Director's Departure From Other NLRB Precedent.

In *Wheeling Island Gaming, Inc.*, 355 N.L.R.B. No. 127 (2010) the Board affirmed the Regional Director's finding that a unit limited to poker dealers was not appropriate because the poker dealers did not have a community of interest separate and distinct from craps, roulette and blackjack dealers. Similarly, the petitioned-for employees here do not have a community of interest separate and distinct from all other employees in the Cellar Department. Here, all Cellar Department employees may clock in anywhere in the Facility and do not have a designated and

exclusive break room (in *Wheeling Island Gaming Inc.*, poker dealers had both) and they are all paid pursuant to the same salary structure (in *Wheeling Island Gaming Inc.*, poker dealers kept their own tips from customers, which was different than the pay arrangement for other dealers who were tipped from a pool). Further, the petitioned-for employees here (as noted by the Regional Director) have identical skills and training as excluded Barrel employees; have the same job descriptions as excluded Barrel employees (Decision pp. 40, fn. 20) (in *Wheeling Island Gaming Inc.*, poker dealers all performed the same duties, and their common job description was different from the job descriptions of the other dealers); the petitioned-for unit of Cellar employees work closely with excluded Barrel and Cellar Services employees throughout the Facility, often hand-in-hand while performing similar work (TR, Page 68, Lines 5-9; Page 153, Lines 21-25; Pages 32-33, Lines 32:24-33:10; Page 153, Lines 21-25; Page 439, Lines 10-21; Page 937, Lines 6-19) (the poker dealers were physically separated from the other dealers); and, finally, the length of breaks for the petitioned-for unit of Cellar employees are the same as for excluded employees (TR, Pages 1051-1053, Lines 1051:11-1053:11) (the poker dealers had longer breaks than other dealers).

Clearly, employees in the *Wheeling Island Gaming* unit sought by the petitioner had even more differences than the excluded employees here, yet the Board refused to fracture the unit.

The Regional Director also ignored *Becker College, Employer, and Service Employees International Union, Local 888*, Case 01-RC-081265 (2012) ("*Becker College*"). While admittedly not controlling precedent, that proceeding sets forth an analogous situation which should have provided persuasive guidance to the Regional Director. In *Becker College*, the petitioner sought a bargaining unit of maintenance employees, including grounds department, maintenance department, housekeeping and equestrian facility employees, but attempted to

exclude transportation department employees, and drivers. *Id.* The Regional Director found, *inter alia*, that the petitioned-for unit was fractured and therefore inappropriate because the drivers shared the same community of interest as the petitioned-for employees. *Id.* The Regional Director could not find a rational basis for the existence of the unit petitioned-for, as the unit was not based upon lines of classification, department, function, work locations or facilities structure, supervision, methods of compensation, benefits, working conditions, or hours of work. *Id.* Because the Regional Director found "the unit sought is a fractured unit that is not readily identifiable as a group," the petitioned-for unit was deemed inappropriate. *Id.*

Similarly, there is no rational basis for finding the Cellar employees here are identifiable as a group as this Employer's operations are based upon one contiguous departmental line of operations, all of which share an overwhelming community of interest with one another.

B. The Regional Director's Decision On Numerous Substantial Factual Issues Is Clearly Erroneous On The Record And Such Error Prejudicially Affects The Rights Of The Employer.

1. The Regional Director Ignored Clear And Uncontroverted Evidence In Finding The Petitioned-For Unit Appropriate.

Record evidence ignored by the Regional Director, includes, *inter alia,* the following: there is no recognizable line drawn by the Employer (e.g., function) for the petitioned-for unit to be deemed appropriate. As noted *infra* Cellar employees do not constitute the "Cellar Department" themselves, notwithstanding the Regional Director's finding to the contrary. Rather, they are merely a part of a larger group of employees, which also includes Barrel employees, Cellar Services employees, and the Recycler, who altogether constitute the "Cellar Department." Further, Cellar employees do not perform any function that Barrel employees do not also perform. In addition to the petition's clear departure from any aspect of the Employer's

organizational structure, it would unjustifiably disrupt the continuous integrated flow of the Employer's production process. *Anheuser-Busch, Inc.* 103 N.L.R.B. 1205 (1953).

As noted repeatedly, the petitioned-for unit does not follow the Employer's departmental line. Instead, the Regional Director has allowed the Petitioner to artfully draw its own boundaries. Doing so ignores intra-departmental classifications, similarity in functions among job titles, and the immediate supervision of the two Cellar Masters by the same Director, all of which contribute to an unmistakable finding that the Cellar employees share a community of interest with Barrel employees, Cellar Services employees, and the Recycler.

The Regional Director also disregarded record evidence showing the excluded employees in the Cellar Department share such an overwhelming community of interest with Cellar employees that the community of interest factors overlap almost completely. As required in *Specialty Healthcare*, the excluded employees possess: (1) a significant overlap in skills and training; (2) similar job functions; (3) lack of distinct work with significant job overlap between classifications; (4) functional integration among employees, including: (i) frequent contact with other employees, and (ii) frequent interchange with other employees; (5) absence of distinct terms and conditions of employment; and (6) common supervision. *Specialty Healthcare*, 357 N.L.R.B. No. 83 at 14 (*quoting United Operations, Inc.*, 338 N.L.R.B. 123, (2002)). The petitioned-for unit shares a clear community of interest with all other employees in the Cellar Department.

a. <u>The record is clear that Cellar and Barrel employees function together as one in moving and preparing wine throughout the Facility.</u>

Among their shared job duties and functions, Barrel and Cellar employees use pumps and hoses to move product throughout the Facility. (TR, Pages 33-34, Lines 33:24-34:25). Barrel, Cellar, and Cellar Services employees all carry the same tools (including gauges, radios, fill

gauges and hose keys (TR, Page 34-35, Lines 34:12-35:5; Page 39-40, Lines 39:6-40:15); use the same pumps and same hoses (TR, Page 34-35, Lines 34:12-35:5; Page 69, Lines 5-12, Page 1071, Lines 12-20); and are fitted with safety respirators (along with Cellar Services) (Pages 175-176, Lines 175:12-176:24). These facts significantly support a finding that they are performing the same tasks at the winery. Beyond this, in conjunction with Cellar Services employees, Cellar and Barrel employees also offload wine trucked in from outside the Facility.[6] (TR, Pages 1078-1080, Lines 1078:23-1080:5; TR, Page 150, Lines 22-23) (*see also* Decision pp. 14). In addition, Cellar and Barrel employees add ingredients[7] to wine in accordance with specific instructions from the Winemaking Department (TR, Page 43, Lines 5-14; Page 429, Lines 20-23). Cellar Services also use lifts and similar equipment to clean the tops of tanks where ingredients are added. (TR, Page 148, Lines 7-13). In fact there was a photograph introduced during the hearing that demonstrates how Cellar and Cellar Services employees concurrently use lifts to work on top of tanks. (R. 65(d); TR, Page 1104-1105, Lines 1104:12-1105:3). Further, as the Regional Director acknowledged, "....the cellar employees and the cellar services employees occasionally work together in filling and cleaning tanks." (Decision pp. 40 fn. 20).

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[6] The Regional Director states that, "cellar department employees [actually referring solely to Cellar employees] are responsible for offloading the product from the tanker by building hoses and lines or processing," and then on the next page correctly notes that offloading is done by other Cellar Department employees as well (Decision pp. 13-14).

[7] Ingredients added include tartaric acid, which was specifically noted during the hearing as one of the many ingredients added by both Cellar employees and Barrel employees. (TR, Page 937, Lines 19-20).

b. The Petitioned-For Unit Is Functionally Integrated with the Entire Cellar Department.

The Regional Director incorrectly states that it is "clear that...cellar and barrel employees...have different job functions in that they work on different portions of the Employer's winemaking process." (Decision pp. 40 fn. 20). On the contrary, Cellar employees, as demonstrated by their diagrammed "swim lane," are involved in the integrated production process from the crush of grapes, or receipt of wine or juice from outside the facility, through the wine leaving bottling tanks and moving to the bottling line. (R. 2; TR, Pages 17-18, Lines 17:17-18:4). Barrel employees work in areas where Cellar employees work. As an example, the Employer's GM testified that Barrel employees will enter Cellar areas to link up certain tanks to transport wine. (TR, Page 153, Lines 21-25). In addition, Cellar employees receive work orders at Taco Bell. (TR, Page 113, Lines 19-20) Barrel employees also receive work orders at Taco Bell. Petitioner's witness Chavez testified that he has seen Barrel employees in the Taco Bell location. (TR, Page 263, Lines 20-25).

Further evidence that Cellar employees are integrated with excluded employees in the Cellar Department can be seen in how a specific brand and varietal of wine, Toasted Head Chardonnay, is produced at the Facility. The tank areas are heavily populated with Cellar employees on a daily basis. (TR, Pages 38-39, Lines 38:17-39:3). The Toasted Head Chardonnay tank area has tanks identified by the moniker, "new 600s." (TR, Pages 223-224, Lines 223:12-19). In these new 600s, both Cellar and Barrel employees add ingredients, including tartaric acid and malic acid, to Toasted Head Chardonnay. (TR, Page 439, Lines 10-21; Page 937, Lines 6-19). A picture of Barrel employees in this area making additions to Toasted Head Chardonnay is part of the record, (R. 65(b); TR, Page 1103, Lines 11-19), and the Employer's winemaking systems demonstrate that Cellar employees, too, have added

ingredients, including tartaric acid, in the Toasted Head Chardonnay production. (R. 49; TR, Page 933-939, Lines 933:13-939:14). Moreover, it is the Cellar employees who move product to the new 600s for use by Barrel employees. (TR, Pages 937, Lines 6-15). In fact, Petitioner's witness Chavez testified that it is possible that he himself has helped move Toasted Head Chardonnay into the new 600s tanks for use by Barrel employees (TR, Page 432, Lines 4-17). He further confirmed that Toasted Head is not a wine that is exclusive to Barrel employees, and that Cellar employees "work" on it and "do stuff to it." (TR, Page 429, Lines 18-24).

c. <u>The Petitioned-For Unit Has Frequent Contact With Other Employees in the Cellar Department.</u>

The Regional Director mistakenly finds that Cellar and Barrel employees work in physically separate locations, and have limited daily contact with each other." (Decision pp. 40 fn. 20). During the hearing, the Employer's GM testified that Barrel and Cellar employees both work in the area where barrel tanks are located, and that these employees interact throughout the Facility. (TR, Pages 32-33, Lines 32:24-33:10; Page 153, Lines 21-25). Cellar and Barrel employees also work "hand-in-hand" in Bottling Line rooms to pump wine out of barrel storage tanks into bottling tanks. (TR, Page 68, Lines 5-9). Petitioner's witness Chavez testified that he has seen Barrel employees inside the Taco Bell location – a building frequented by Cellar employees. (TR, Page 263, Lines 20-25). Further, Petitioner's witness Lee testified, Cellar employees regularly enter Barrel areas to retrieve concentrate, and that Cellar employees enter the Barrel room once a week to take inventory of the concentrate available. (TR, Page 842-843, Lines 842:14-843:24).

The Employer's GM also testified that not just Cellar employees, but excluded employees in the Cellar Department and other departments in the Facility, also frequent the Taco Truck, and that he has personally seen Cellar, Cellar Services, Barrel, Sanitation and

Maintenance employees purchase food there. (TR, Pages 1043-1044, Lines 1043:5-1044:4). To justify his not giving credence to this fact, the Regional Director cites the testimony of Petitioner witness Lee, who testified he never saw anyone other than Cellar employees buy lunch at the Taco Truck. The Regional Director ignored the same witness's testimony that he only saw Cellar employees purchasing food from the Taco Truck back in or around 2005 or 2006, and that he himself **has not purchased food from the truck in three or four years**. (TR, Pages 678-679, Lines 678:8-679:9). The Taco Truck is on the property daily from 10:30 AM to 1:30 PM only and the truck stays in one location, by the Bottling Department. (TR, Pages 1036-1037, Lines 1036:25-1037:5) The Petitioner's witnesses have not worked during those hours in over one year. Therefore, how could either of Petitioner's witnesses have seen employees at the Taco Truck? As further evidence of Chavez's misleading testimony regarding lunch breaks, on cross-examination, he finally admitted that his "lunch breaks" on the swing shift were at 7:30 PM and 10 PM, and his "lunch breaks" on the graveyard shift were at 1:30 AM, and therefore he does not know which people eat together at the Facility between 10:30 AM and 2:00 PM (i.e., during the day shift). (TR, Pages 370-378, Lines 370:11-378:21).

Clearly, the Regional Director's reliance on the Petitioner's witnesses' testimony was misplaced.

d. The Petitioned-For Unit Has Interchange With Other Employees in the Cellar Department.

While the Regional Director recognizes the evidence of historical interchange between Cellar and Barrel employees. (Decision pp. 40 fn. 20), he ignores record testimony that Cellar employees have applied for and obtained positions in Barrel, Barrel employees have applied for and obtained positions in Cellar, Cellar employees have applied for and obtained positions in Bottling, and Cellar employees have applied for and obtained positions at other Employer

facilities. (TR, Page 137, Lines 19-22). The record also contains evidence of employees outside the Cellar Department transferring into a range of different jobs in the Cellar Department, as follows: (1) Ron Berreth started in Cellar and transferred to Barrel (TR, Page 1176, Lines 15-20); (2) John Khem transferred from Cellar to Barrel (TR, Pages 1176-1177, Lines 1176:21-1177:1); (3) Hector Morales transferred from Cellar to Barrel (TR, Page 1177, Lines 2-7); (4) Fernando Ramirez transferred from Cellar to Barrel (TR, Page 1177, Lines 8-13); (5) Dennis Wilson transferred from Cellar to Barrel (TR, Page 1177, Lines 14-19); and (6) Sara Saenz transferred from Cellar to Cellar Services (TR, Page 1178, Lines 14-19). Barrel, Cellar and Cellar Services employees have the same skills, as set forth in the four job descriptions which are common to Bottling and Cellar: Operator I (entry level), Operator II (intermediate), Senior Operator, and Foreman. (P. 19).

e. <u>The Petitioned-For Unit Does Not Have Distinct Terms and Conditions of Employment Different from Other Cellar Department Employees.</u>

Cellar, Barrel, and Cellar Services employees have the same job titles and are all included in the Employer's "H-band" pay range, (TR, Pages 1093-1094, Lines 1093:15-1094:25), and Cellar, Barrel, and Cellar Services employees, like all production and maintenance employees in the Facility, have their performance reviewed on the same "5-Point Rating Scale." (R. 42 -5-Point Rating Scale, TR, Page 882, Lines 14-24; Page 1149-1150, Lines 1149:4-1150:16). The Regional Director acknowledges that similar terms and conditions of employment, the same benefits, similar hourly pay ranges within the same pay band, similar equipment, and the same attire requirements are shared among all employees, including those in the Cellar Department. (See Decision pp. 37).

f. The Petitioned-For Unit's Separate Front-Line and Intermediate Supervisors, Is Not Dispositive.

The Regional Director correctly notes that, despite the fact that all employees in the Cellar Department ultimately report to the same Director, Cellar and Barrel/Cellar Services have "separate front-line supervisors and separate intermediate supervisors (i.e. the Cellar Masters)." However, this fact, among so many others, is not dispositive, as the Board has previously found that separate supervision does not compel a finding that the petitioned-for unit is appropriate. *See Aztar Indiana Gaming Co., LLC d/b/a Casino Aztar & Int'l Bhd. of Teamsters*, 349 N.L.R.B. 603, 607 (2007) (petitioned-for unit that was separately supervised, but which had other factors that weighed in finding that the unit did not have a separate community of interest from other groups of employees, did not compel a finding that the petitioned-for unit was appropriate) (*citing Hotel Services Group, Inc.*, 328 N.L.R.B. 116, 117 (1999)).

2. The Decision of The Regional Director Is Replete With Other Errors Which Undermine His Findings and Erroneously Lead Him to Conclude that Neither the Wall-To-Wall Unit nor a Complete Cellar Department Unit Is An Appropriate Unit

There "is no legitimate basis upon which to exclude certain employees from" the unit because the traditional community-of-interest factors "overlap almost completely." *Blue Man Vegas, LLC v. N.L.R.B.*, 529 F.3d 417, 421-22 (D.C. Cir. 2008). The Regional Director's omissions, misreading, ignoring of the record, and categorical failure to assess the credibility of the Petitioner's witnesses substantially undermines his findings. Below are a few examples of the facts the Regional Director failed to grasp:

a. "*In the middle of the complex is Taco Bell, the headquarters for cellar employees. At Taco Bell, cellar employees punch in, take breaks, and receive work orders.*" (Decision p. 15) and "*Inside Taco Bell are men's and women's locker rooms, bathrooms, refrigerators, microwaves, and an eating area*" (Decision p. 17). The Regional Director

mistakenly suggests that the Taco Bell location is exclusively frequented by Cellar employees. That is incorrect—Winemaking and Maintenance employees also frequent this location with Cellar employees. (TR, Page 113, Lines 19-22). Winemaking employees visit Taco Bell every morning to meet Cellar employees and personally deliver work orders. (TR, Page 307, Lines 15-17). Both of the Petitioner witnesses testified that Barrel employees come the Taco Bell location. (TR, Page 263, Lines 20-25, Page 834-835: Lines 834:16-835:6). The Regional Director also mistakenly suggests that Cellar employees solely utilize the Taco Bell location to clock in, which contradicts Petitioner witness Chavez, who testified that he clocks in at Taco Bell **or** the break room. (TR, Page 183-184, Lines 183:19-184:6; Page 753, Lines 3-5). In addition, Lee's time clock records demonstrate he clocked in at various areas of the Facility other than Taco Bell, including the production break room and the production lab. (R. 69; TR, Pages 1130-1131, Lines 1130:19-1131:7). The Regional Director also incorrectly identified Taco Bell as the place Cellar employees take their breaks. The production break room is in a separate building from Taco Bell and is located near the "burning bush". Petitioner's witnesses testified that the lockers, refrigerators, microwaves and eating areas reportedly used only by Cellar employees are located in the production break room. Lee identified other, non-Cellar employees of the Facility using the production break room. (TR, Page 728, Lines 5-22). Further, Chavez's testimony suggests that as a Cellar employee, his locker was located in a break room located apart from the Taco Bell. (TR, Page 210, Lines 18-23).

b. "*Moreover, the record reveals that bottling sanitation employees clean tanks (which are filled by cellar), return wine to bottling return ("BR") tanks (which is transferred out of the BR tanks by cellar), sanitize filters, and hand off product to bottling.*" (Decision p. 10). However, Cellar employees also clean tanks and other equipment. The

Regional Director himself notes these job responsibilities in his description of Cellar employees' duties. (*See* Decision pp. 8-9). Moreover, with respect to the return of wine, Sanitation and Cellar employees (including both Cellar employees and other employees in the Cellar Department) work together in performing this task on a daily basis (TR, Page 81, Lines 6-25; Page 358, Lines 7-23). Pictures of the Bottling Line 1 and 2 rooms where Sanitation and Cellar Department employees perform their bottling return work were produced at the hearing. (R. 6(a), 6(b), 8; TR, Pages 357-358, Lines 357:16-358:23; Pages 363-364, Lines 363:2-364:11). The Employer's GM testified that he has personally seen Sanitation and Cellar Department employees share responsibility in performing bottling return work. (TR, Page 20, Lines 1-5).

c. "*The filtration building is where wine is prepared for bottling, with the bottling tanks in the adjacent building. These bottling areas are essentially exclusive to bottling, though the record reveals that bottling operators work next to sanitation.*" (Decision p. 15). The Regional Director has misread the record. Cellar employees work side by side with Bottling employees on a daily basis in two small rooms in the Bottling Department. (TR, Pages 80-84, Lines 80:25-84:2). R. 6(a), 6(b), 8.

d. "*Bottling follows extensive, detailed international protocols throughout processing; cellar employees are not trained on these procedures.*" (Decision pp. 13). The Decision ignores record evidence that the international protocols ("ISOs") apply to all of the Facility's processes (TR, Pages 12, Lines 13-22). Petitioner introduced as an Exhibit numerous ISOs applicable to both Barrel and Cellar employees as members of the Cellar Department (P. 6; TR, Page 304, Line 15), which were identified as including, but not limited to, ISOs on: press operating procedures (Page 313, Lines 13-18); red ribbon tank procedures (Page 315, Lines 6-14); the addition of certain ingredients (TR, Pages 316-320, Lines 316:22-320:2); cellar cross

flow operating procedures (TR, Pages 320-321, Lines 320: 25-321:7); rotovac operation procedures (TR, Page 321, Lines 16-21); centrifuge operations procedures (TR, Page 322, Lines 3-10); EK operating procedure (TR, Page 323, Lines 1-6); SUDMO manual operating procedures (TR, Page 323, Lines 10-22); Westfalia separator logs (TR, Page 324, Lines 2-12); candle filter logs (TR, Page 325-326, Lines 325:17-326:3); drain and press operations (TR, Page 326, Lines 13-21), and directive press logs (TR, Page 327, Lines 18-24).

e. "*Both cellar employees testified they have never seen anyone besides cellar employees in the ingredients room (albeit, one of those employees has only worked swing or night shift).*" (Decision p. 16). This erroneous finding is based upon the Regional Director's curious crediting of Petitioner witness Lee's testimony, despite the fact that until December 2013, Lee only worked the swing shift, (TR, Page 679, Lines 15-18), and therefore he was not on site when the vast majority of the Facility's employees were working. Accordingly, Lee's testimony should be viewed with great skepticism. Regardless, photographic evidence of Winemaking and Barrel employees working in the ingredients room was introduced at the hearing, and it was explained that the employees photographed were preparing yeast and other ingredients to be transported for use by Barrel employees (R. 59(a); TR, Pages 1028-1029; Lines 1028:22-1029:23).

f. "*However, even if employees use the same category of equipment, such as hoses, some departments uses [sic] different measures or types of equipment than others.*" (Decision Page 24). The Regional Director ignores the record testimony that Cellar and Barrel employees use the same tools, pumps, and hoses. (TR, Page 34-35, Lines 34:12-35:5; Page 69, Lines 5-12; Page 1071: Lines 13-20). In addition, Cellar and Sanitation employees use the same hose clamps. (TR, Page 362, Lines 16-19). Barrel, Cellar, and Sanitation employees carry

gauges, and hose keys, without any apparent differences in the equipment, and, in addition, every employee of every department carries a radio. (TR, Pages 39-40, Lines 39:8-40:21).

g. Additionally, the Regional Director entirely ignores evidence of collective bargaining agreements from other wineries, stating "[T]he Employer cites to no case law indicating that a specialty industry standard exists for wineries, but instead provided collective bargaining agreements from other wineries, which are not controlling to the instant analysis." (Regional Director's January 8, 2015 Decision page 39, note 19). The Board itself has stated: "In determining an appropriate unit we look not only to the history of collective bargaining with the particular employer, but also to the methods which have been used elsewhere in the same industry." *R. B. Butler, Inc.*, 160 N.L.R.B. 1595, 1600 (1966). The Board has also considered area practice in other industries when determining whether a petitioned-for unit is appropriate. *See In Re MGM Mirage*, 338 N.L.R.B. 529, 532 (2002) (Board considered area practice and found, contrary to the Regional Director's decision, the petitioned-for unit was appropriate). Even if not controlling, the Regional Director does not at all weigh the history of collective bargaining with the Employer or in the industry in his assessment of the appropriate unit. The Regional Director, here, completely dismissed the Employer's evidence of bargaining history.

C. There are Compelling Reasons for the Board to Reconsider its Standard for Determining An Appropriate Bargaining Unit as Addressed in Specialty Healthcare and Macy's.

1. The Decades Long Standard Of Presumptive Appropriateness Of Facility-Wide Units Requires That The Petitioned-For Unit Be Rejected.

Although nothing in the Act requires the Board to identify the *only* appropriate unit or the *most* appropriate unit, in determining *an* appropriate unit, the Regional Director ignored that the Act does require that the bargaining unit composition assure all employees the fullest freedom in exercising the rights guaranteed by the Act. *See Overnite Transp. Co.*, 322 N.L.R.B.

723, 726 (1996); *Brand Precision Serv.*, 313 N.L.R.B. 657, 658 (1994); *Phoenix Resort Corp.*, 308 N.L.R.B. 826, 828 (1992). In defining an appropriate bargaining unit to ensure employees the fullest freedom in exercising the rights guaranteed by the Act, the Regional Director inexcusably ignored the Board's long established precedent that a plant-wide unit "is presumptively appropriate under the Act, and a community of interest inherently exists among such employees." *Airco, Inc.* 273 N.L.R.B. 348, 349 (1984) (*citing Kalamazoo Paper Box Corp.,* 136 N.L.R.B. 134, 136 (1962)). In *Airco*, the Regional Director recommended a bargaining unit that consists of an arbitrary portion of the Plant -- seven distinct departments that are no more connected than the three that are excluded. *Id.* It is only when the ten departments are unified together that the bargaining unit represents employees that share a community of interest. *Id.*

Based on the foregoing, the Employer respectfully submits that the Board should take this opportunity to (1) reaffirm—to the extent *Specialty Healthcare* continues to be the position of the Board—that it did not intend to disturb "various presumptions .... and occupation rules [developed] in the course of adjudication," 357 N.L.R.B. No. 83 at 13 n.29, and (2) accordingly reverse the Regional Director's rejection of the wall-to-wall presumption.

Further, the Board has, time and again, rejected a union's request for employee subsets. *See Charrette Drafting Supplies,* 275 N.L.R.B. 1294 (1985) (rejecting petition for only operations department employees at one location); *Levitz Furniture Co. of Santa Clara, Inc.*, 192 N.L.R.B. 61 (1971) (rejecting petition for units of only warehouse non-selling employees and separate unit of truck drivers and approving wall-to-wall unit at single location); *Bullock's Inc.*, 119 N.L.R.B. 642 (1957) ("*I. Magnin*") (rejecting unit of only four

departments of shoe salesman in large department store with 105 departments). In those situations, the Board stated that it will only approve a subdivision where it can be established that the petitioned-for employees have a community of interest "sufficiently distinct from other employees to warrant a separate…unit." *Charrette,* 275 N.L.R.B. at 1296; *Levitz Furniture Co.,* 192 N.L.R.B. at 62-63; *I. Magnin,* 119 N.L.R.B. at 643.

This standard is still the appropriate standard for unit appropriateness, even after *Specialty Healthcare.* Indeed, proper application of the Board's presumptive wall-to-wall standard is even more appropriate given the policy concerns that arise when the Board or its Regional Directors improperly apply the *Specialty Healthcare* decision to larger production facilities, as the Regional Director did here. The Regional Director's Decision and the Board's current stance undermines its responsibility to "assure to employees the fullest freedom" in exercising their Section 7 rights.

The decision of the Regional Director—if left to stand—vests the Petitioner with the absolute power alone to control the scope of the appropriate unit. The fractured, arbitrary unit proposed by the Petitioner and approved by the Regional Director also violates the requirement in Section 9(c)(5) of the Act that "in determining whether a unit is appropriate...the extent to which the employees have organized shall not be controlling." 29 U.S.C. §159(c)(5). If the Board deviates from the presumptive standard and instead allows unions to petition for individual departments of a production Facility, employees face a serious risk of being disenfranchised in the exercise of their Section 7 rights. *See* HR Policy 6th Cir. *Amicus* Br. at 15-19 (addressing risk of disenfranchisement under *Specialty Healthcare; Dtg Operations, Inc. & Teamsters Local Union No. 455, Int'l Bhd. of Teamsters,* 357 N.L.R.B. No. 175 (Dec. 30, 2011) (petitioned-for unit was inappropriate because the RSAs share an "overwhelming community of interest" with the remaining employees, such as lot agents, courtesy bus drivers, mechanics,

return agents, etc., and therefore only a wall-to-wall unit was appropriate); *Beaumont Forging Co.*, 110 N.L.R.B. 2200 (1954) (plant unit presumptively favored over two departmental units).

While applying *Specialty Healthcare* to employers in "limited circumstances" may not "otherwise represent a significant departure from a well-settled area of the law," *Northrop Grumman Shipbuilding, Inc. & Int'l Ass'n of Machinists & Aerospace Workers,* 357 N.L.R.B. No. 163, 3 n.8 (Dec. 30, 2011) (*quoting SNE Enterprises,* 344 N.L.R.B. 673, 674 (2005)), the Regional Director deviated from the presumptive production and maintenance wall to wall standard - a manifest injustice requiring reversal of the Regional Director's Decision.[8]

2. Regional Directors May Not Disregard The Validity Of Previously Established Industry-Specific Standards.

While footnote 29 of the Board's *Specialty Healthcare* decision states that it did not change previously-established industry standards, such standards have come under attack in multiple cases since *Specialty Healthcare,* including this case. *See, e.g., Northrop Grumman Shipbuilding,* 357 N.L.R.B. No. 163 at 4 (employer asserting that special rules apply to units for technical employees). The Board should not reverse its position as stated in footnote 29 of its *Specialty Healthcare* decision. Indeed, given the apparent willingness of Regional Directors to set such standards aside, it appears necessary for the Board to clarify that notwithstanding its decision in *Specialty Healthcare,* traditional industry unit determination standards should continue to be applied.

[8] Even in the retail sector, the Board frowns upon "separate units". *See* e.g.,. *I. Magnin & Co.*, 119 N.L.R.B. 642, 643 (1957) (rejecting unit of department store's four shoe departments); *Allied Stores of New York, Inc.*, 150 N.L.R.B. 799 (1965) (approving separate units for selling employees and nonselling employees); *Wickes Furniture*, 231 N.L.R.B. 154 (1977) (approving a unit of all salespersons); *Lord & Taylor*, 150 N.L.R.B. No. 81(1965) (nonselling employees); *Arnold Constable*, 150 N.L.R.B. No. 80 (1965) (separate units of selling, office and restaurant); *Saks & Co.*, 160 N.L.R.B. No. 59 (1966) (nonselling).

Indeed, the Board has been reversed for "fail[ing] to give a reasoned justification for departing from its precedent." *E.I. Du Pont De Nemours & Co. v. NLRB,* 682 F.3d 65, 70 (D.C. Cir. 2012). It is important, if the Board is departing from the substantial Facility-wide unit precedent, to fully state its reasoning and justification for such change of position. If the Board were to entertain the possibility of upsetting industry standards in the retail, transportation, manufacturing, technical, or any other industry, at a minimum the Board should afford all potentially-affected parties notice and the opportunity to submit their positions.

Further, numerous other Board decisions refuse to find appropriate a subset of employees for reasons justified by the record in this case. In *Levitz Furniture,* the Board refused to find appropriate (1) a unit of all nonselling employees; (2) a unit of all truckdrivers and truckdrivers' helpers; or (3) a unit combining those two classification but excluding all other employees. 192 N.L.R.B. at 61. The Board noted that: included and excluded employees shared immediate supervisors; the only difference between included employees and excluded salesmen was the provision of a commission to salesmen; and "[t]he entire store activities are devoted *to all phases* of selling merchandise." *Id.* at 61-62.

Likewise, in *Charrette,* the Board rejected a union's petitioned-for unit of only operations department employees, who conducted inventory control, stocking, receiving, order pulling, order packing, shipping and delivery functions, at one of the employer's two locations. 275 N.L.R.B. at 1294. As in *Charrette* and this case, the included and excluded employees shared common management. 275 N.L.R.B. at 1296. The wages and benefits for sales, retail, and operations employees (i.e., excluded and included employees), were "approximately the same." *Id.* And, like here, the Board found that the operations department

employees had "a great deal of interaction and communication" with [employees in other departments]. *Id.* at 1295.

Even if the Board were to conclude that a wall-to-wall unit was inappropriate, the Board has traditionally approved units no more narrow than units drawn along functional lines of an Employer. *See Wickes Furniture,* 231 N.L.R.B. 154 (declining wall-to-wall unit in favor of unit including all salespersons); *Allied Stores of New York, Inc.,* 150 N.L.R.B. 799 (declining storewide unit in favor of units of selling, nonselling, and restaurant employees along functional lines); *A. Harris & Co.,* 116 N.L.R.B. 1628 (1956) (finding appropriate a unit of all warehouse department employees and declining to add other selling employees). The Regional Director's conclusion that the petitioned-for unit of 46 cellar employees constitutes an appropriate unit simply cannot be squared with decades of the Board's jurisprudence and, therefore, should be reversed.

V. CONCLUSION.

Contrary to the Regional Director's conclusion, the 46 employee petitioned-for unit of only Cellar employees is not an appropriate unit as it fractures the Employer's Facility operations. Any appropriate unit must be a wall-to-wall unit of production and maintenance employees at the Facility. Any other unit would be inconsistent with longstanding Board precedent. In the alternative, the Employer contends that if any so-called "micro unit" is appropriate, it is a unit comprised of all Cellar Department employees. Therefore, the Employer respectfully requests that the Board grant its Request for Review of the Regional Director's Decision.

DATED: January 29, 2015

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STATEMENT OF SERVICE

I hereby certify and declare under penalty of perjury, under the laws of the United States of America and the State of California, that a copy of THE EMPLOYER'S CONSTELLATION BRANDS, U.S. OPERATIONS, INC. D/B/A WOODBRIDGE WINERY'S REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION TO THE OFFICE OF THE EXECUTIVE SECRETARY was served today, January 29, 2015, on the following parties or persons via facsimile and Federal Express:

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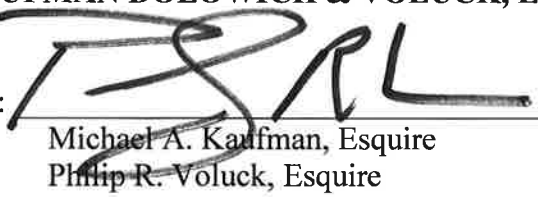
By: 

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